

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-09)

Approved for use through 07/31/2012. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

6066USBX2009T00920(3712044-01151)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on _____

Signature _____

Typed or printed name _____

Application Number

10/659,760

Filed

2003-09-10

First Named Inventor

Simpson, et al.

Art Unit

3686

Examiner

Hiep Van Nguyen

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

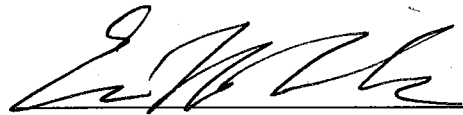
I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 57200

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____



Signature

Eric M. Williams

Typed or printed name

(312) 807-4334

Telephone number

May 17, 2010

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Simpson, et al.
Appl. No.: 10/659,760
Conf. No.: 4834
Filed: September 10, 2003
Title: WIRELESS MEDICAL DATA COMMUNICATION SYSTEM AND METHOD
Art Unit: 3686
Examiner: Nguyen, Hiep Van
Docket No.: 6066US BX2009T00920 (3712044-01151)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Examiners:

Introduction

This Request and the following remarks are in response to the final Office Action dated February 22, 2010 (“the final Office Action”) and the Advisory Action dated April 30, 2010. Applicants respectfully submit that the final Office Action and the Advisory Action rise to the level of clear error, making this case proper for pre-appeal review. This Request is filed contemporaneously with a form PTO/SB/33, “Pre-Appeal Brief Request for Review” and form PTO/SB/31, “Notice of Appeal.” Please charge Deposit Account No. 02-1818 for the Notice of Appeal fee set forth under 37 C.F.R. §41.20(b)(1) and any other fees due in connection with this Request.

Claims 1 to 53 and 58 are pending in the application. In the final Office Action, Claims 1 to 53 and 58 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,641,533 to Causey III et al. (“*Causey*”) in view of U.S. Patent No. 5,827,180 to Goodman (“*Goodman*”). Applicants note that at page 3, paragraph number 3, the final Office Action states that Claims 1 to 58 are rejected as being unpatentable over *Causey* in view of *Goodman*. However, Claims 54 to 57 were previously canceled. Applicants accordingly address the rejection of Claims 1 to 53 and 58 as being unpatentable over *Goodman* in view of *Causey*. Applicants note that the Advisory Action dated April 30, 2010 did not address the arguments made in the last Response to the final Office Action.

35 U.S.C. Section 103(a) Rejection of Claims 1 to 53 and 58

Regarding the rejection of independent claim 1 over *Causey* in view of *Goodman*, independent claim 1 is directed to a system for reporting on the integrity of a wireless communication link within a healthcare facility including, in part:

a wireless remote device within the healthcare facility having a message indicator responsive to the status information output transmitted over the wireless communication link and representative of the signal generated by the medication treatment application device; software installed on the wireless remote device having a time-out output; and, wherein the time-out output indicates loss of the wireless communication link. (emphasis added).

Applicants have argued and continue to respectfully submit that *Causey* and *Goodman* do not disclose or suggest a system for reporting on the integrity of a wireless communication link including software installed on the wireless remote device having a time-out output, and the time-out output indicating a loss of the wireless communication link.

The final Office Action at page 3 appears to acknowledge that *Causey* does not disclose a system including software installed on a wireless remote device having a time-out output, wherein the time-out output indicates a loss of a wireless communication link. Applicants respectfully submit that *Causey* indeed does not disclose such a system and refer the Patent Office to the arguments presented in the Response to the Advisory Action of June 3, 2009 and to the final Office Action of February 20, 2009, at pages 9 to 11.

The final Office Action at pages 3, 8 and 9 relies on *Goodman* for the disclosure of a system including software installed on the wireless remote device having a time-out output and the time-out output indicating a loss of the wireless communication link. Specifically, the final Office Action at pages 8 and 9 states that:

Goodman discloses transmitting a wireless signal to said message device in response to an occurrence of said time action and providing message device with an event indicator having an active and inactive state ('180; Claim 1, Col. 14, lines 1-17).

Therefore given the broadest reasonable interpretation to one of ordinary skill in the art, it is submitted that the transmitting a wireless signal to said message device in response to an occurrence of said time action with an active and inactive state is in a form described as the a time-out output in the Applicant's invention.

As an initial matter, Applicants respectfully submit that claims are not given merely their broadest interpretation, but must instead be, "given their broadest reasonable interpretation consistent with the specification." See, M.P.E.P. 2111; *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (emphasis added). Applicants respectfully submit that the interpretation at pages 8 and 9 of the final Office Action of the disclosure in *Goodman* of the system for reporting on the integrity of a wireless communication link of claim 1 including software installed on the wireless remote device having a time-out output, and the time-out output indicating a loss of the wireless communication link does not reasonably reflect the meaning of claim 1, especially in light of Applicants' specification, which instead teaches the following.

As noted in the Response to the final Office Action, the software installed on the wireless device of claim 1 has a time-out output that tests the integrity of a wireless communication link. See, Applicants' specification, page 5, line 16. For example, the software of claim 1 can test the integrity of the wireless communication link by polling or monitoring communication from a central system (e.g., central system 118) or an access point (e.g., access point 114). See, Applicants' specification, page 5, lines 16 to 17. The time-out output of claim 1 is an output generated by the software for indicating that the software has waited a certain amount of time for input, but has not received it. See, Applicants' specification, page 5, line 24 to 26.

In contrast, nowhere does *Goodman* disclose software that tests the integrity of a wireless communication link. Instead, *Goodman* discloses transmitting a wireless signal, receiving the wireless signal, and placing an event indicator in an active state in response to receiving the wireless signal. See, *Goodman*, claim 1. The active state in *Goodman* is therefore an indication that a wireless signal has been received. That is, the event indicator becomes active upon receipt of the wireless signal. See, *Goodman*, claim 1. The inactive state in *Goodman* is a state in which no wireless signal has been received. Thus, unlike the system of claim 1, the inactive state in *Goodman* is not an output resulting from a test as to the integrity of a wireless communication link. In other words, the inactive state in *Goodman* is not software that produces and output that indicates a loss of a wireless communication link.

To put the above distinction another way, unlike the system of claim 1, the inactive state in *Goodman* is not an output generated from software as a result of the software waiting a certain amount of time for an input, but not receiving it. Nothing in *Goodman* suggests that if a wireless

signal is sent and not received, then a time-out output is generated by software that indicates that a wireless communication link is lost.

The final Office Action at page 3 also cites to column 5, lines 42 to 55 and column 6, lines 23 to 42 of *Goodman* for the disclosure of software installed on a wireless remote device having a time-out output. Applicant respectfully submits that these passages in *Goodman* also fail to disclose or suggest software installed on the wireless remote device having a time-out output and the time-out output indicating a loss of the wireless communication link.

Instead, column 5, lines 42 to 55 in *Goodman* discloses:

[i]n a further embodiment of message device 20, software and adapters can be developed so that personal digital assistants, such as the devices model Wizard available from SHARP Electronics, Inc., device model HP 100LX available from Hewlett Packard, and device model Newton available from Apple Computer, Inc., can communicate with the data processor 10 to receive information from, and deliver information to, the host computer 30 and to generate the alerts for medication regimen, store the patient compliance data, and to provide a display of sales information downloaded from data processor 10 and for two-way communication with data processor. Standard data communications can be used and these can be easily created by persons of ordinary skill in the art.

This above-quoted passage describes an embodiment of *Goodman* in which messaging device 20 includes software to communicate with data processor 10 to deliver information to host computer 30. Nowhere does the quote of *Goodman* describe a system including software installed on a wireless remote device having a time-out output, and, wherein the time-out output indicates loss of a wireless communication link.

Similarly, column 6, lines 32 to 42 of *Goodman* discloses:

The software will then actuate the alarm and display the appropriate message as the stored regimen is executed, without prompting by wireless carrier 60. This will reduce communication costs. If the medication regimen is changed, the wireless carrier 60 can re-program the paging device 61' as appropriate. Further, the clock 63 in the paging device 61 is preferably resettable by a general broadcast of a time control signal by the wireless carrier 60. This embodiment is better suited for paging devices having two-way communication capabilities so that safe receipt of the downloaded regimen can be confirmed. (emphasis added).

The above-quoted passage merely describes an embodiment of *Goodman* in which host computer 30 communicates with wireless carrier 60 to provide information to patients having paging devices 61. See, *Goodman*, Fig. 4a and accompanying text. In one version of this embodiment, *Goodman* discloses a modified paging device 61', which includes a non-volatile

memory 62, real-time clock 63, antenna 66 and a suitable software 64 for storing data within paging device 61'. See, *Goodman*, Fig. 4b, column 6, lines 16 to 22.

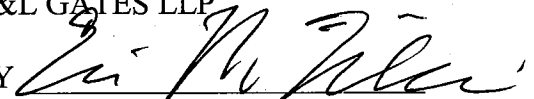
The final Office Action at page 3 states that, "the Examiner interprets the resettable time control signal by the wireless carrier as loss of the wireless communication link." Applicants respectfully submit that *Goodman* does not disclose that this time control signal includes a time-out output that indicates loss of a wireless link. Instead, this time control signal (underlined in the above-quoted passage) is generated by the wireless carrier to reset clock 63 of paging device 61. Applicants accordingly respectfully submit that the time control signal of *Goodman* is not software installed on a wireless device having a time-out output that indicates loss of a wireless link, as required by claim 1. For at least the above reasons, Applicants respectfully submit that independent claim 1, and dependent claims 2 to 17 are patentably distinguished over *Causey* and *Goodman*.

Independent claims 18, 33 and 44 include similar elements to claim 1. In particular, claim 18 includes, in part, installing software on a wireless remote device that generates a time-out output when the wireless communication link is lost. Claim 33 includes, in part, installing software on a wireless remote device for generating a time-out output by polling or monitoring the communication link to actively test its integrity, and generating the time-out output when the wireless communication link is lost. Claim 44 includes, in part, software installed on the wireless remote device having a time-out output, and wherein the time-out output indicates loss of the wireless remote device to receive the status information transmitted over the wireless communication link. Applicants accordingly respectfully submit for at least the reasons given above with respect to independent claim 1, independent claims 18, 33 and 44, and their respective dependent claims 19 to 32, 34 to 43, and 45 to 53 and 58 are also patentably distinguished over *Causey* and *Goodman*.

Respectfully submitted,

K&L GATES LLP

BY



Eric M. Williams

Reg. No. 57,200

Customer No. 29200

Dated: May 17, 2010